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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/810,029

Filing Date: March 26, 2004

Appellant(s): FELSKE ET AL.

Hans Felske et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/16/09 appealing from the Office action
mailed 11/19/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct and the amendment to claim 13 filed with this brief has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,114,509	Poe	9-1978
4,423,608	Funaki	1-1984
5,129,768	Hoyle	7-1992
4,726,722	Wollar	2-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Specification

This objection is relevant to argument section A.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the claimed terms "head portion", "foot portion", "fully fitted position", "axial spacing", "nominal transverse extent", "axial extent", "transverse extent", "first seating extent", "axial thickness", and "shoulder" find no basis in the specification.

Claim Rejections—35 USC § 112

This rejection is relevant to argument section B.

Claims 8–15 and 17–27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 8 and 19 recite in lines 12–14 that “the foot portion of the holding pin [has] a nominal transverse extent … at least as large as the largest transverse extent of the aperture of the second structure”; and in lines 15–16 that “the foot portion of the holding pin [has], in the fully fitted position of the holding pin, at [sic] a smaller transverse extent than its nominal transverse extent”. These limitations are unsupported by the specification, which states that shanks 8, 9 (considered to correspond to the claimed “foot portion”) must be forced apart from one another if they are to engage attachment hole 6 (page 11, lines 12–23). This would indicate that the ‘nominal transverse extent’ of the shanks can be no larger than the extent of hole 6, and that the transverse extent of the shanks in the fully fitted position would be as large as the nominal transverse extent. Further, Fig. 4 shows the holding pin engaging the holes, in what would appear to be the fully fitted position, with the shanks inserted into the hole at what appears to be their nominal transverse extent (no apparent deflection when compared to Fig. 3, for example), which is no larger than the extent of the hole.

This rejection is relevant to argument section C.

Claims 8–16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8 and 16 recite the limitations “the first structure” and “the second structure” in lines 5–6 of each claim. There is insufficient antecedent basis for these limitations in the claims. It is unclear whether the claims are directed towards a subcombination (*i.e.*, an attachment device) or a combination (*i.e.*, an appliance containing an attachment device). The preamble to each claim appears to indicate that the claims are directed towards the subcombination, for which the first and second structure of a household appliance are merely an intended use, but each claim contains specific recitations of portions of the appliance, making the scope of the claims unclear.

Claim Rejections—35 USC § 102

This rejection is relevant to argument section D.

Claims 8, 10–14, 16–20, and 22–26 are rejected under 35 U.S.C. 102(b) as being anticipated by Poe, US patent 4,114,509. Poe discloses an attachment apparatus having a holding pin (1) with a head portion (4) and a foot portion (6), disposable into a fully fitted position (Fig. 2) extending through an aperture (24) in a first structure (22) and an aperture (25) in a second structure (23); the foot portion having a nominal transverse extent as large as the extent of the second structure aperture, and exerting a radially outward force against the aperture of the second structure to resist being

dislodged; the head portion having a transverse extent larger than the extent of the first structure aperture; the holding pin further including a first seating extent (5) between the head portion and the foot portion, and a shoulder (8) spaced from the head portion. Though Poe does not expressly teach that the pin maintains the first and second structures at an axial spacing from one another, the pin would inherently be capable of holding the structures spaced apart (as Fig. 2).

Regarding claims 10–14, Poe further discloses a slot (7) formed in the holding pin; a head-type attachment (4, 5) adjoining the slot; an axial bore (3) for receiving an attachment element (2); and a foot portion with a constant nominal transverse extent which undergoes outward radial spreading to be secured to the second structure.

Claim Rejections—35 USC § 103

This rejection is relevant to argument section E.

Claim 9 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poe as applied to claim 8 above, and further in view of Funaki, US patent 4,423,608, and Hoyle et al., US patent 5,129,768. Poe teaches an attachment apparatus substantially as claimed, including a holding pin securing a first structure to a second structure; but does not teach a second structure being a body with a cabinet shape, or a first structure being a work surface panel with a rear surround. Funaki teaches a household appliance (10) having a body (12) with a cabinet shape, and a work surface panel (78) attached thereto, the work surface panel having a rear surround (86) integrally formed thereon, with corresponding holes (see Fig. 2) in the body and work

surface panel for fasteners to hold the rear surround at a defined height relative to the body. It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to use the holding pin of Poe to fasten a work surface panel to a body, as taught by Funaki, for the purpose of securely joining the components of an appliance.

Poe and Funaki do not teach an aperture in the first structure which is an elongated hole. Hoyle et al. teach an attachment apparatus including a holding pin (10) with a head portion (12) and a foot portion (21), securing first and second structures (52, 34) together, the first structure having an elongated hole (32) therein to allow the holding pin to shift to compensate for misalignment of the panels (col. 1, lines 12–16). It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the attachment apparatus of Poe, already modified by Funaki, by providing the first structure with an elongated hole, as taught by Hoyle et al., for the purpose of enabling the holding pin to move laterally to accommodate variations in the positions of the body and work surface panel.

This rejection is relevant to argument section F.

Claim 15 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poe as applied to claim 11 above, and further in view of Wollar et al., US patent 4,610,587. Poe discloses an attachment apparatus substantially as claimed, but not a head-type attachment with a pair of ear-shaped lateral projections, with the slot reaching the projections. Wollar et al. teach a holding pin with a head-type attachment

(26), and foot portion (24) with a slot (30) there through; further teaching that the head-type attachment includes two ear-shaped lateral projections (60) with an internal separation as large as the diameter of an attachment element (22), the slot of the holding pin extending as far as the lateral projections (Fig. 18). It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the attachment apparatus of Poe by providing the head-type attachment with a pair of ear-shaped lateral projections with the slot extending as far as the projections, as taught by Wollar et al., for the purpose of providing bearing surfaces to engage the attachment element.

(10) Response to Argument

A. The objection to the specification

The appellant argues on page 10-13 of the brief that the terms do have antecedent basis in the specification. Since this is an objection to the specification, this is not an appealable issue and must be petitioned. It should be noted that the examiner is not saying the elements are not supported by the disclosure just that the claim terms must be specifically used at some point in the specification when describing the invention.

B. The 112, first paragraph, rejections of claim 8-15 and 17-27

The appellant argues on page 13 and 14 of the brief that “to release the securement of the holding pin from the attachment hole (6), the shanks (8, 9) can be

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pressed towards one another in the installed position. " While this phrase could imply that the rest position (nominal transverse extent) of the shanks (8,9) press into the attachment hole (6) and therefore need to pried together to release the holding pin, but based on the rest of the specification, the examiner contends that the need for the shanks (8,9) to be pried together would result from deformation caused by the screw insertion as the shank edges "bury" itself into the attachment hole (page 11, lines 19-21). As seen in figure 4, there is a small space between the walls of the attachment hole (6) and the shanks (8,9) of the holding pin. As seen in page 11 lines 11-23 of the specification, a screw (16) is required to create a close force fit and press the shank parts towards the inner wall of the attachment hole (6) thereby implying a loose fit before the screw is inserted.

The applicant also argues that the tapered foot portion known as the smaller transverse extent causes the shank parts (8,9) to press towards each other when inserted in the attachment hole. This is not what the specification or drawings supports, the examiner contends that since the attachment hole (5) is smaller (due to the shoulder section of the holding pin) that it is this aperture (5) of the first structure that presses the shanks together and not the aperture (6) of the second structure.

It should be noted that the amendment to claim 13 has been entered and therefore the rejection and arguments towards it are moot.

C. The 112, second paragraph, rejections of claims 8-16

The appellant argues on page 15 of the brief that the recitation of the first and second structure in claims 8 and 16 are just intended use. In the brief the appellant states that their intention is that claim 8 and 16 are directed to the subcombination that is just the attachment apparatus (the holding pin and screw). Therefore the language in claims referring to the first and second structure should be in an intended use form with language such as "adapted to" or "configured for". Examples of current positive language is in claim 8, line 6-7 which recites "the holding pin extends through an aperture in the first structure and through an aperture in the second structure" and in line 12-13 which recites "the holding pin engaging the first structure".

D. Claims 8,10-14,16-20, and 22-26 are not anticipated by Poe

The appellant argues that Poe does not teach an arrangement in which the holding pin engages the first structure and the second structure to maintain the first structure at an axial spacing from the second structure in the region of the apertures of the first and second structures. Please note that claims 8 and 16 are directed to solely the attachment apparatus and the first and second structures are just part of the intended use. Therefore, since the holding pin of Poe includes all the elements required by the claimed invention, it is considered to meet the intended use because there are no claimed structural differences of the holding pin. Furthermore, since the structure of the holding pin of Poe is the same as applicant's invention, the pin of Poe should also be considered capable of holding the first and second structure apart.

Independent claim 19 is directed to the combination of the both structures and the attachment arrangement. As seen in figure 2 of Poe, there is a position of the first and second structures being axial spaced apart. As seen in figure 2, the holding pin is in a position where the constriction portion (9,10,11) of the holding pin substantially is in the aperture of the second structure and if the plunger is pressed in at this point, then the shanks (6) would not be pressed all the way out as seen in figure 3 of Poe. The examiner contends that under this situation, the holding pin would not pull the two structures towards each other as the appellant argues on page 17 of the brief. Therefore under this situation with no modification to the taught structure of Poe, the first and second structures would be brought to a position that the shanks “bury” into the aperture and thereby maintain an axial spacing.

The appellant argues in regards to claim 17 that the aperture in the first structure of Poe is not an elongated hole to prevent rotational movement. The examiner agrees that Poe does not teach an elongated hole, but since claim 17 is dependent from claim 8, it was considered to be directed to only subcombination and therefore the elongated hole was given only intended use weight. When this feature was presented in claim 9 and 21, which positively claim the first and second structures, a 103 rejection was used with Hoyle as a reference to teach this feature. It should be noted that the appellant has presented no arguments towards this combination other than the additional references do not cure the deficiency of the Poe rejection of the independent claim which amounts to a pure conclusory statement. In response to applicant's arguments against the references individually, one cannot show nonobviousness by

attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

E. Claims 9 and 21 are not unpatentable over Poe in view of Funaki and Hoyle

No argument has been presented towards the combination of Poe in view of Funaki and Hoyle other than the deficiencies of Poe which have been addressed above.

F. Claims 15 and 27 are not unpatentable over Poe in view of Wollar

Poe is the primary reference with Wollar as the modifying reference therefore only the arguments towards Poe in view of Wollar are being considered. There is no response since it is only the features of Wollar individually that are being argued.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Timothy M Ayres/

Examiner, Art Unit 3637

2/18/10

/Darnell M Jayne/

Supervisory Patent

Examiner, Art Unit 3637

Conferees:

Janet Wilkens /JW/

Darnell Jayne /dj/